Larson v. Larson.

Appeals Court of Massachusetts

July 16, 2024, Entered

23-P-852

Reporter
2024 Mass. App. Unpub. LEXIS 441 *; 104 Mass. App. Ct. 1114; 238 N.E.3d 826

TYLER K. LARSON *vs*. AMY LARSON.

Notice: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chace* v. *Curran*, 71 Mass. App. Ct. 258, 260 n.4, 881 N.E.2d 792 (2008).

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Disposition: Judgment affirmed.

Judges: Green, C.J., Vuono & Massing, JJ. [*1] .

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The mother appeals from a judgment of divorce nisi entered after trial, which, among other things, denied her request to remove the parties' two ***children*** from Massachusetts to Alabama. On appeal, the mother argues that the judge abused her discretion in concluding that ***removal*** is not in the best interests of the ***children***. We discern no abuse of discretion or error of law and affirm.

We review a judge's decision regarding the ***removal*** of ***children*** from the ***Commonwealth*** for "'abuse of discretion or other error of law,' accepting the judge's findings unless shown to be clearly erroneous." *E.K.* v. *S.C.*, 97 Mass. App. Ct. 403, 411-412, 148 N.E.3d 414 (2020), quoting *Murray* v. *Super*, 87 Mass. App. Ct. 146, 148, 26 N.E.3d 1116 (2015). "[A] judge's discretionary decision constitutes an abuse of discretion where we conclude the judge made 'a clear error of judgment in weighing' the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives" (citation omitted). *L.L.* v. ***Commonwealth***, 470 Mass. 169, 185 n.27, 20 N.E.3d 930 (2014).

"If the party seeking ***removal*** is the sole physical custodian of the ***children***, then the judge must consider the request under a two-prong test set forth in *Yannas*." *Altomare* v. *Altomare*, 77 Mass. App. Ct. 601, 603, 933 N.E.2d 170 (2010). See *Yannas* v. *Frondistou-Yannas*, 395 Mass. 704, 710-712, 481 N.E.2d 1153 (1985). "[T]he first consideration is whether there is a good reason for the move, a 'real [*2] advantage.'" *Yannas, supra* at 711.

Second, if the custodial parent satisfies the "real advantage" test, the judge must examine whether ***removal*** is in the best interests of the ***children***, which is the court's "paramount concern." *Id.* at 710.

In the present case, the judge determined that though the mother established a "real advantage" for the move, ***removal*** is not in the best interests of the ***children***.[1] The relevant factors in determining the best interests of the ***children*** are:

> "(1) whether the quality of the ***children***'s lives will be improved, including any improvement that 'may flow from an improvement in the quality of the custodial parent's life'; (2) any possible 'adverse effect of the elimination or curtailment of the ***child***[ren]'s association with the noncustodial parent'; (3) 'the extent to which moving or not moving will affect the [***children***'s] emotional, physical, or developmental needs'; (4) the interests of both parents; and (5) the possibility of an alternative visitation schedule for the noncustodial parent."

Murray, 87 Mass. App. Ct. at 150, quoting *Dickenson* v. *Cogswell*, 66 Mass. App. Ct. 442, 447, 848 N.E.2d 800 (2006).

The mother contends that the judge erred by (1) not placing sufficient weight on the benefit of the move to the mother, (2) disregarding the hardships that the mother would [*3] experience by remaining in Massachusetts, and (3) placing dispositive weight on the effect of the ***removal*** on the father. We disagree.

The judge acknowledged that the move to Alabama would benefit the mother emotionally and socially and "likely reduce [her] stress and sorrows," which in turn would positively affect the ***children***.[2] On the other hand, the judge considered that the father is "actively involved in the ***children***'s lives through his frequent and continued contact" with them, and that, if the ***children*** were removed, "they would be uprooted not only from their relationship with the father, but the relationships they have formed at daycare, their routines, and the father's extended family who have provided significant support to the family."[3] Moreover, the judge found that having to travel to Alabama to exercise his parenting time would cause a financial and logistical hardship for the father.[4] Implicit in the judge's findings is the expectation that, as a practical matter, the father's parenting time would decrease significantly if the ***children*** were moved to Alabama, even if the court approved a more generous parenting plan. "We discern no abuse of discretion with respect to the judge's [*4] consideration and balancing of the interests at stake here." *Miller* v. *Miller*, 478 Mass. 642, 658, 88 N.E.3d 843 (2018). The judge's determination that the benefit to the mother does not outweigh the negative impact on "the ***children***'s own emotional and developmental wellbeing due to the distance from their father" cannot be said to lie outside the range of reasonable alternatives. Accordingly, we reject the mother's claim that the judge abused her discretion in concluding that ***removal*** is not in the ***children***'s best interests.[5]

Judgment affirmed.

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[1] The judge found that it was in the ***children***'s best interest that the mother remain their primary caregiver, and based on the parenting plan in place at the time of trial, applied the *Yannas* standard in evaluating her request for ***removal***.

[2] Though the mother claimed that she has little to no support network in Massachusetts, the judge was not persuaded that the mother had been unable to develop friends or other supportive relationships during the time (since 2007) she has lived and worked in the ***Commonwealth***. The judge, however, did find that residing near her family in Alabama, including her sister and her parents, would positively affect the mother's happiness.

[3] The judge found that under the mother's proposed parenting schedule, the father's parenting time would be considerably less than what he currently has.

[4] The judge noted that the father is not able to take off work on alternating Fridays and Mondays to travel to and from Alabama for his weekend parenting time.

[5] In the exercise of our discretion, we deny the husband's request for appellate fees and expenses. See *Fronk* v. *Fowler*, 456 Mass. 317, 326-327, 923 N.E.2d 503 (2010).

By the Court (Green, C.J., Vuono & Massing, JJ.[6]),

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[6] The panelists are listed in order of seniority.